

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SPRING STREET APTS WACO, LLC, §

Plaintiff, §

VS. §

**PHILADELPHIA INDEMNITY
INSURANCE COMPANY and
CRAWFORD & COMPANY,** §

Defendants. §

CASE NO. 6:16-cv-00315- RP-JCM

**DEFENDANT PHILADELPHIA INDEMNITY INSURANCE COMPANY'S
MOTION FOR LEAVE AND SUR-REPLY TO
PLAINTIFF'S MOTION TO COMPEL BETTER DISCOVERY
RESPONSES AND/OR OVERRULE OBJECTIONS**

TO THE HONORABLE UNITED STATES MAGISTRATE JUDGE:

Defendant Philadelphia Indemnity Insurance Company ("Philadelphia"), through the undersigned counsel, files this Motion for Leave and Sur-reply to *Plaintiff's Motion to Compel Better Discovery Responses and/or Overrule Objections* (Doc. #67).

MOTION FOR LEAVE

A. Philadelphia moves for leave of court to file its response.

1. Philadelphia moves this Court for leave to file its Response to Plaintiff's Motion to Compel because Philadelphia's one-day delay in filing was not intentional or a result of conscious indifference. Instead, Philadelphia's delay was the product of a miscommunication and calendaring issue over the staggered July

Fourth holiday. Granting leave is within the Court's discretion and will not operate to prejudice Plaintiff.

2. Plaintiff seeks Philadelphia's internal communications and other documents Philadelphia exchanged internally related to its decision to file a counterclaim in this lawsuit. *E.g.*, Doc. #67 at 3-10. Philadelphia asserts that these materials are absolutely privileged. *See* Doc. #71 at 7-12.

3. In its motion to compel, Plaintiff failed to set forth the correct law governing privileges in diversity cases and failed to otherwise show it is legally entitled to this discovery. Doc. #71 at 7. Philadelphia explains this in its response. Doc. #71 at 7-12.

4. Philadelphia respectfully requests that the Court grant it leave to file its response. By accepting its response, Philadelphia can protect its privileged information and documents from improper discovery and this Court can make its decision after analyzing the issues under the correct law. Accepting Philadelphia's response as filed is within the Court's discretion.

B. Philadelphia seeks leave of court to exceed the page-limit rule.

5. Philadelphia respectfully moves the Court for leave to file its 13-page response.

6. Plaintiff's motion does not acknowledge that Texas privilege law controls in diversity cases such as this one. *See generally* Doc. #67 at 7-10.

7. Philadelphia's response exceeds the 10-page limit due to Philadelphia's use of block quotes of the controlling Texas cases. *See* Doc. #71 at 8-10, 12.

Philadelphia provided the block quotations as a courtesy to the Court, not to gain any advantage by filling up additional pages of argument.

8. If the Court decides to deny Philadelphia leave to exceed the Local Rules page limit, Philadelphia respectfully requests that the block quotes contained in its response not be counted against the page limit. Alternatively, Philadelphia requests that the Court take judicial notice of the case citations and ignore the block quotes when counting pages. Granting leave is within the Court's discretion.

PRAYER

FOR THESE REASONS, Defendant Philadelphia Indemnity Insurance Company respectfully requests that this Court grant it leave to file its Response to Plaintiff's Motion to Compel Better Discovery Responses and/or Overrule Objections and to accept its filed Response in its entirety, and after final review deny Plaintiff's motion.

Respectfully submitted,

/s/ William R. Pilat

William R. Pilat
Texas Bar No. 00788205
Admitted in Western District of Texas
KANE RUSSELL COLEMAN & LOGAN PC
5051 Westheimer Road, 10th Floor
Houston, Texas 77056
Telephone: 713-425-7400
Facsimile: 713-425-7700
Email: wpilat@krcl.com

ATTORNEY-IN-CHARGE FOR DEFENDANT
PHILADELPHIA INDEMNITY INSURANCE COMPANY

OF COUNSEL:

John P. Palmer
Texas Bar No. 15430600
Admitted in Western District of Texas
NAMAN, HOWELL, SMITH & LEE, PLLC
P.O. Box 1470
Waco, Texas 76703-1470
Telephone: 254-755-4100
Facsimile: 254-754-6331
Email: palmer@namanhowell.com

CERTIFICATE OF SERVICE

I certify that on July 7, 2017, a true and correct copy of the foregoing *Defendant's Response to Plaintiff's Motion to Compel Better Discovery Answers and/or Overrule Objections* was forwarded to all other counsel of record, as listed below, through the electronic case filing system that serves the United States District Courts for the Western District of Texas.

Sean Bukowski
BUKOWSKI LAW FIRM, P.C.
815 Brazos Street, Suite 400
Austin, Texas 78701

John P. Palmer
NAMAN, HOWELL, SMITH & LEE, PLLC
P.O. Box 1470
Waco, Texas 76703-1470

/s/ William R. Pilat
William R. Pilat